IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL WRIT PETITION NO.818 OF 2006

Nitin Dattatray Keny
Age: 45 years, Occ. : Business
9, Hiraji Bhavan, S.V. Road,
Kandivali (W), Mumbai--400 067. : Petitioner

V/s.

1. The State of Maharashtra
   At the instance of Sr. Inspector
   of Police, Borivali Police
   Station, Mumbai.
2. A.N. Roy
   The Commissioner of Police,
   Brihan Mumbai. : Respondents

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Mr.R.M.Agarwal with Mr.B.R.Patil and Mr.Naveen Chomal for the petitioner.

Mrs.A.S.Pai, Addl. Public Prosecutor for the State.

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CORAM : D.G.DESHPANDE & S.A.BOBDE,JJ.

DATE : JUNE 19, 2006.

ORAL JUDGEMENT (Per S.A.Bobde,J.)

1. Rule, returnable forthwith.

Mrs.Pai, learned Addl. Public Prosecutor, appears and waives service of rule on behalf of the respondents.

Heard by consent.

2. By this petition, the petitioner has levelled a pre-execution challenge to an order of detention bearing No.161/PCB/DP/Zone-XI/2005 dated 31.10.2005 passed by the Commissioner of Police, Brihan Mumbai, directing detention of the petitioner for a period of one year under the Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug-Offenders and Dangerous Persons Act, 1981, hereinafter referred to as the "Act".

3. The order of detention has not yet been served upon the petitioner. The learned Vacation Judge of this Court has on 19.5.2006 directed that the petitioner be not detained till 12.6.2006. The learned Addl. Public Prosecutor has moved this Court for vacation of that order. Instead of deciding the propriety of the interim order, we have, with the consent of the learned counsel for the petitioner, heard the petition itself.

4. The main contention raised by Mr.Agarwal, learned counsel for the petitioner, is that respondent No.2, Commissioner of Police, Brihan Mumbai, has exercised the power of detention for a wrong purpose. The wrong purpose

alleged by the petitioner is the demand by the Inspector of Police, one Kalekar, incharge of the Externment Division, for a bribe of Rs.2 lakhs. According to the petitioner, the said police Officer has threatened that he would procure his detention under the provisions of the Act for the petitioner's role in an incident which took place at a petrol pump. The said incident took place at Famous Petrol Pump on S.V.Road, Borivli, where the petitioner is said to have got into a quarrel with a worker of the petrol pump who allegedly slapped the petitioner. According to the petitioner, he lodged a F.I.R. against those involved in the incident. However, according to the petitioner, the police have wrongly guided the culprit to lodge a F.I.R. against him and have demanded a bribe in that regard. The petitioner states that one Senior Police Inspector Suresh Marathe had extorted a sum of Rs.55,000/- from his partner, one Vijay Bhosale. Further, Inspector Kalekar, incharge of the Externment Division, has sent a message for payment of another sum and has himself demanded a sum of Rs.2 lakhs from the petitioner. The petitioner has stated that said Kalekar has thereafter made calls to him. Thereafter, the police Officers have demanded a bribe by making calls or on meeting the petitioner.

5. The aforesaid averments of the petitioner are denied

by the Commissioner of Police in his affidavit dated 28.4.2006. The Commissioner has affirmed that he passed the detention order upon being satisfied from the material produced before him that the petitioner's activities were prejudicial to the maintenance of public order and has referred to the past cases against the petitioner. He has denied all allegations of mala fide and has asserted that the detention order is passed on the basis of material placed before him with a view to preventing him from indulging in prejudicial activities in future. It is settled law vide Addl. Secy., Govt. of India v. Alka Subhash Gadia (1992 Suppl. (1) SCC 496) that though this Court has the power to entertain a grievance against any detention order prior to its execution, the grounds on which such interference is permissible are necessarily limited in scope and number, viz., where the Courts are prima facie satisfied:-

(i) that the impugned order is not passed under the Act under which it is purported to have been passed;

(ii) that it is sought to be executed against a wrong person;

(iii) that it is passed for a wrong purpose;

(iv) that it is passed on vague, extraneous and irrelevant grounds or;

(v) that the authority which passed it had no authority to do so. The refusal by the Courts to use their extraordinary powers of judicial review to interfere with the detention orders prior to their execution on and other ground does not amount to the abandonment of the said power or to their denial to the proposed detenu, but prevents their abuse and the perversion of the law in question."

6. The learned counsel for the petitioner argued the case under ground (iii) that the order is passed for a wrong purpose. It may be true that if the order of detention is passed for failure of a citizen to meet an illegal demand of the police, the purpose of the detention would be said to be wrong. It is, however, difficult to hold the impugned detention order as illegal on that ground in this case. Firstly, the alleged demand is not made by the authority which passed the order, viz., the Commissioner of Police. Secondly, the so-called demand is a mere allegation. It is not established. We, therefore, decline to exercise the extraordinary jurisdiction of this Court on this ground.

7. Mr.Agarwal, learned counsel for the petitioner next submitted that though the petitioner has not seen the detention order, there is a reasonable apprehension that the ground of detention is based only on the aforesaid incident at the petrol pump. According to the learned counsel, if this is so, it would amount to a wrong purpose since the said incident can only be said to affect law and order and not public order. We have, therefore, examined the detention order submitted to us by the learned Addl. Public Prosecutor. We find that there are several grounds on which the order of detention is based. We do not propose to go into the validity of those grounds; indeed the submission of the learned counsel for the petitioner did not make it necessary to do so. We, therefore, do not consider it appropriate to make any comments whatsoever on the said grounds.

8. Having regard to the aforesaid circumstances of this case, we are of view that this is not an appropriate case for exercise of our jurisdiction under Article 226 of the Constitution of India since the "very limited grounds" set out by the Supreme Court in the cases of pre-execution detentions are not available.

9. In this view of the matter, the petition fails. The rule is discharged. There shall be no order as to costs.

10. Prayer for stay is rejected.

D.G. DESHPANDE, J.

S.A. BOBDE, J.